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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,812	03/15/2001	Peter H. Markusch	Mo-5942/MD-00-46-PU	6332

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EXAMINER

BISSETT, MELANIE D

ART UNIT	PAPER NUMBER
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1711

8

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/808,812

Applicant(s)

MARKUSCH ET AL.

Examiner

Melanie D. Bissett

Art Unit

1711

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____


Claim(s) objected to: _____

Claim(s) rejected: 1-9

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: the examiner will maintain the rejections based on 35 USC 102 and 35 USC 103. In response to the applicant's arguments that the examiner's use of phrases including "points to", "similar", and "suggesting" do not suggest the anticipation of the claim, it is the examiner's position that, in this case, the examiner has used "points to" and "suggesting" to point out specific passages in the reference that teach the claimed limitations. One of ordinary skill in the art, upon reading Gasper, would recognize the reference as encompassing and teaching the claimed limitations. The examiner points to "similar" materials used in the art to show further similarities in the geotextile materials of the art and the claimed invention. Note that specific geotextile materials are not claimed. The examiner has pointed to passages in the reference to support anticipation of the claims. In response to the applicant's argument that the claims specify the use of two layers of different materials instead of multiple layers of the same material, it is noted that the claims, as written, do not specify different materials. The reference uses materials which are dimensionally stable (support layers) and also flexible, thus meeting the limitations of either or both claimed layers. The examiner withdraws the argument that it has been held obvious to use multiple layers of the same material, since the case law is not at hand. However, the examiner maintains the motivation presented in the rejection of Adam et al. in view of Payne. One of ordinary skill in the art would recognize the conventionality of using two blanket layers, taught in the secondary reference Payne, and would be motivated by the expectancy of forming a ditch liner of equally improved cure processibility. The examiner also maintains the motivation for the rejection of Payne in view of Adam et al., where it would have been prima facie obvious to use Adam's polyurethane compositions in Payne's invention to provide liquid adhesive materials having improved cure processibility. Additional note: The examiner has changed the status of claims 12-27 in the present amendment from "withdrawn" to "cancelled", since claims 12-27 were cancelled in Amendment A filed 12/16/02.


James J. Seidleck
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Technology Center 1700